IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2426 of 1997

with

CIVIL APPLICATION NO. 6813 OF 1997

KULDIPSINH RAMHARISINH JAT

Versus

PRABHULAL HIRACHAND MEHTA

Appearance:

MR RAJNI H MEHTA for Petitioners

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE H.R.SHELAT

Date of Order: 11/09/97

ORAL ORDER

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act') against the common judgment and award passed by the MACT,Kutch at Bhuj in MAC Petition No. 520 of 1990 whereby respondent No.1 came to be awarded an amount of Rs 1,14,560/- by way of compensation with interest for personal injuries sustained by him in a vehicular accident which occurred on 4.9.1990. Respondent No.1 was one of the eight unfortunate persons. Out of 8 persons, 7 persons succumbed to the serious injuries sustained by them and one got injured.

The appellants are original opponents Nos. 1 and 3 and respondent No.1 is the original claimant and respondent No.2 is the original opponent No.2 in the claim petition wherein the claimant had claimed an amount of Rs. 1,25,000/- by way of compensation for personal injuries. Parties are referred to as arraigned in the original proceedings.

The learned advocate Mr. Mehta for the appellants has contended that in this matter, the amount of compensation

is on higher side.

After having considered the relevant evidence copies whereof were supplied to us during the course of hearing by the learned advocate Mr. Mehta, we find that the discretion exercised by the Tribunal in awarding a consolidated sum of Rs. 1,14,560/- for personal injuries sustained by the claimant, cannot be said to be exorbitant or inordinately high. It is a settled proposition of law, while dealing with appeals under Section 173 of the Act, that the appellate court unlike court under Section 96 of the Code of Civil Procedure, would not interfere with the discretionary exercise of power by the Tribunal constituted under the Act unless the amount awarded is inordinately low or is very excesssive and which has resulted into manifest miscarriage of justice. Applying this yardstick to the factual scenario emerging from the record of the present case, we find that the amount awarded to the claimant for injuries does not fall within that category. With the result, it does not warrant our interference in the discretionary exercise of power for personal injuries sustained by the original claimant on account of vehicular accident which is not in dispute.

Moreover, it would also be interesting to note in this case that there were three fractures. The injured was aged 45 at the relevant time. He had sustained serious injuries , as can be seen from the evidence. Ofcourse, the claimant in his evidence has stated that he had sustained five fractures.There were fractures, according to him, in the palm, chest portion, back portion and on the shoulder. On account of serious injuries, immediately after happening of the accident, he was shifted to Rahpar hospital from where he was taken to G.K.General Hospital, Bhuj where he was kept as an indoor patient for a month. In all, he was undergoing treatment for seven months. The claimant has itemised the expenditure incurred by him in the course of treatment for injuries sustained by him in the aforesaid accident. The injured was earning Rs. 3000/-a month. He has filed return of income tax for the year 1987-88. Income-tax assessment order is also produced.

Orthopaedic surgeon has certified that the injured has sustained permanent partial disablement to the extent of 14% of the body as a whole. Obviously, fracture of three ribs, fracture of clavicle, fracture of neck and other fractures and injuries have shattered the anatomical frame and integrity of the claimant, if not totally affected. The extent of effect of bodily integrity on

account of injuries and the extent of permanent partial disablement to the extent of 14% of the body as a whole and that too at the age of 45, obviously would create handicap in pursuing normal pursuits and avocation of life much less professional activity. In the circumstance, the assessment of the Tribunal to the extent of Rs. 1,14,560/- cannot be said to be higher or excessive or exorbitant. With the result, we find only justification from the record to reject this appeal at the threshold. Accordingly, this appeal; is rejected at the admission stage.

Before parting, it may be noted that amount of Rs.25,000/- deposited by the appellants alongwith the memo of appeal under Section 173 of the Act shall be transmitted to the Tribunal concerned forthwith so as to facilitate the Tribunal to make appropriate order for disbursement and investment alongwith other amount in terms of the award. No orders on the civil application.

(J.N.Bhatt,J.)

(H.R.Shelat,J.)